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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-96461; File No. SR-NYSECHX-2022-28]**

**Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Schedule of NYSE Chicago, Inc.**

December 7, 2022

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 28, 2022, NYSE Chicago, Inc. (“NYSE Chicago” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (the “Fee Schedule”) to adopt a new credit and increase an existing credit applicable to certain Exchange members. The Exchange proposes to implement the fee changes effective

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

November 28, 2022. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a new credit and increase an existing credit applicable to certain Exchange members. Specifically, the Exchange proposes new Section F.1 to adopt a Participant<sup>4</sup> credit applicable to Clearing Participants and amend Section F.2 to increase the Transaction Fee Credit and Clearing Submission Fee Credit applicable to Clearing Brokers. The Exchange proposes to implement the fee changes effective November 28, 2022.<sup>5</sup>

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<sup>4</sup> A "Participant" is, except as otherwise described in the Rules of the Exchange, "any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Authorized Trader or Institutional Broker Representative, respectively." See Article 1, Rule 1(s).

<sup>5</sup> The Exchange originally filed to amend the Fee Schedule on November 1, 2022 (SR-NYSECHX-2022-25). SR-NYSECHX-2022-25 was subsequently

## Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation National Market System (“NMS”), the Commission highlighted the importance of market forces in determining prices and Self-Regulatory Organizations (“SRO”) revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>6</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>7</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>8</sup> numerous alternative trading systems,<sup>9</sup> and broker-dealer internalizers and

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withdrawn and replaced by SR-NYSECHX-2022-26. SR-NYSECHX-2022-26 was subsequently withdrawn and replaced by this filing.

<sup>6</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>7</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>8</sup> See Cboe U.S Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share).

<sup>9</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.<sup>10</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 1% market share of executed volume of equities trading.<sup>11</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow.

#### Proposed Rule Change

Current Section E.3(a) assesses a fee of \$0.0030 per share, capped at \$75 per Clearing Side,<sup>12</sup> for an execution within the Exchange in a security priced at \$1.00 per share or more that results from an agency order submitted by an Institutional Broker.<sup>13</sup>

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<sup>10</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>11</sup> See *id.*

<sup>12</sup> Section E.3(a)(3) of the Fee Schedule defines "Clearing Side," in pertinent part, as the buy or sell side of a clearing submission that is related to a Section E.3(a) or Section E.7 execution. The Clearing Side is paid by the Clearing Participant or an Institutional Broker.

<sup>13</sup> The term "Institutional Broker" is defined in Article 1, Rule 1(n) to mean a member of the Exchange who is registered as an Institutional Broker pursuant to the provisions of Article 17 and has satisfied all Exchange requirements to operate as an Institutional Broker on the Exchange.; see also generally NYSE Chicago Article 17.

Current Section E.7 assesses a similar fee of \$0.0030 per share, capped at \$75 per Clearing Side, for an away execution in a security priced at \$1.00 per share or more that is cleared through the Exchange's systems by an Institutional Broker and submitted to a Qualified Clearing Agency pursuant to Article 21, Rule 6(a).<sup>14</sup>

The Exchange proposes to adopt new Section F.1 titled "Participant credits" pursuant to which the total monthly fees owed by a Clearing Participant to the Exchange under Section E.3(a) and Section E.7 would be reduced by the application of a credit equal to 5% of such fees. The Exchange believes that reducing Section E.3(a) and Section E.7 fees would increase trading on the Exchange.

Additionally, current Section F.2 provides for a Transaction Fee Credit and a Clearing Submission Fee Credit and generally states that the total monthly fees owed by an Exchange-registered Institutional Broker to the Exchange will be reduced (and Institutional Brokers will be paid for any unused credits) by the application of a Transaction Fee Credit and a Clearing Submission Fee Credit. Specifically, a Clearing Broker<sup>15</sup> receives a "Transaction Fee Credit" equal to 5% of the transaction fees received by the Exchange each month for agency trades executed through the Institutional Broker (i.e., Section E.3(a) fees) for the portion(s) of the transaction handled by the Clearing

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<sup>14</sup> Section E.3(a) and E.7 fees are virtually identical as both apply to executions effected through Institutional Brokers that are cleared through the Exchange's clearing systems, except that Section E.3(a) applies to executions within the Exchange, whereas Section E.7 applies to qualified away executions pursuant to CHX Article 21, Rule 6(a).

<sup>15</sup> Section F.2 of the Fee Schedule defines "Clearing Broker" as the Exchange-registered Institutional Broker that did not execute the trade, but acted as the broker for the ultimate Clearing Participant. "Clearing Participant" means a Participant which has been admitted to membership in a Qualified Clearing Agency pursuant to the provisions of the Rules of the Qualified Clearing Agency. See Article 1, Rule 1(ee).

Broker. Similarly, a Clearing Broker receives a “Clearing Submission Fee Credit” equal to 5% of the Clearing Submission Fees received by the Exchange pursuant to Section E.7 of the Fee Schedule for the portion(s) of the transaction handled by the Clearing Broker. Also, only Institutional Brokers which are members of the Financial Industry Regulatory Authority, Inc. are eligible for the Clearing Submission Fee Credit. Both the Transaction Fee Credit and the Clearing Submission Fee Credit are provided by the Exchange to the Clearing Broker, who then passes on these credits to the Institutional Broker associated with the transaction.

The Exchange proposes to amend current Section F.2 by increasing both the Transaction Fee Credit and the Clearing Submission Fee Credit from 5% to 8% each. As with the Participant credit proposed herein, the Exchange believes that increasing the Transaction Fee Credit and the Clearing Submission Fee Credit, which would result in reduced fees, would increase trading and post-trade activity on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>16</sup> in general, and furthers the objectives of Sections 6(b)(4) of the Act,<sup>17</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

### The Proposed Fee Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>18</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders that provide liquidity on an Exchange, Participants can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed new Participant credit is reasonable because it is designed to encourage increased trading activity on the Exchange. The Exchange believes the proposed rule change to introduce the Participant credit, which would result in lower fees paid by Clearing Participants for the execution of single-sided or cross orders, would incentivize more trading on the Exchange. Further, the Exchange

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<sup>18</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

believes that increasing the Transaction Fee Credit, which applies to executions effected on the Exchange, and the Clearing Submission Fee Credit, which applies to off-exchange executions cleared on the Exchange, from 5% to 8% is reasonable because these credits are designed to incent trading, in the case of the Transaction Fee Credit, and clearing activity, in the case of the Clearing Submission Fee Credit, by Institutional Brokers. The Exchange believes increasing these credits, which would result in lower fees, is a reasonable means to further incentivize Institutional Brokers to conduct more of their trading and clearing activity on the Exchange.

The Exchange believes that the proposal represents a reasonable effort to promote enhanced order execution opportunities as well as promote post-trade clearing submissions by Exchange members. The Exchange notes that market participants are free to shift their order flow to competing venues if they believe other markets offer more favorable fees and credits.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to attract additional order flow and increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

#### The Proposed Fee Change is an Equitable Allocation of Fees and Credits

The Exchange believes that the proposed new Participant credit and the proposed increase to the Transaction Fee Credit and the Clearing Submission Fee Credit equitably allocates its fees and credits among its market participants. The Exchange believes the proposed new Participant credit is equitable because it is open to all similarly situated Clearing Participants on an equal basis and provides a per share credit that is reasonably



related to the value of an exchange's market quality associated with higher volumes. The Exchange believes it is equitable to provide Clearing Participants with the proposed credit and provide Clearing Brokers with increased credits, both of which would result in lower fees, because the credits would serve to incentivize each such member to conduct more of its trading and clearing activity on the Exchange.

The Exchange believes that the proposed new Participant credit could encourage the submission of a greater number of orders to the Exchange, thus enhancing order execution opportunities for all market participants trading on the Exchange. All market participants would benefit from the greater amounts of liquidity that would be present on the Exchange, which would provide greater execution opportunities. The Exchange also believes that the proposed increase to the Transaction Fee Credit and the Clearing Submission Fee Credit could encourage Institutional Brokers to conduct more of their trading and post-trade activity on the Exchange.

#### The Proposed Fee Change is Not Unfairly Discriminatory

The Exchange believes that the proposed new Participant credit and increasing the level of the Transaction Fee Credit and the Clearing Submission Fee Credit is not unfairly discriminatory. The Exchange believes that the proposal does not permit unfair discrimination because the proposed new credit would be applied to all similarly situated Clearing Participants while the existing Transaction Fee Credit and the Clearing Submission Fee Credit would be similarly applied to all Clearing Brokers on an equal basis. Accordingly, no Exchange member already operating on the Exchange would be disadvantaged by the proposed allocation of fees and credits under the proposal. The Exchange further believes that the proposed fee change would not permit unfair

discrimination among Clearing Participants or among Clearing Brokers because the credits would be available equally to them. As described above, in today's competitive marketplace, market participants have a choice of where to direct their order flow or which market to transact on. The Exchange believes this proposal would benefit a number of members by lowering their current fees, regardless of whether or not they increase their trading and clearing activity on the Exchange.

In the prevailing competitive environment, Exchange members are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, no Exchange member already operating on the Exchange would be disadvantaged by the proposed allocation of the Exchange's fees and credits.

Finally, the submission of orders to the Exchange is optional for Exchange members in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>19</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of

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<sup>19</sup> 15 U.S.C. 78f(b)(8).

additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants on the Exchange. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>20</sup>

*Intramarket Competition.* The Exchange believes the proposed new Participant credit and the proposed increase to the Transaction Fee Credit and the Clearing Submission Fee Credit would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange. The proposed changes are designed to attract additional trading and post-trade activity to the Exchange. The Exchange believes that the proposed adoption of the Participant credit and increasing the level of the Transaction Fee Credit and the Clearing Submission Fee Credit would incentivize market participants to direct more of their trading and post-trading activity to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality. Additionally, the proposed changes would apply equally to all similarly situated Clearing Participants and Clearing Brokers, in that they would all be equally eligible for the credits available under Sections

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<sup>20</sup> See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

F.1 and F.2, respectively, of the Fee Schedule.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (i.e., excluding auctions) is currently less than 1%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>21</sup> of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSECHX-2022-28 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2022-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSECHX-2022-28 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2022-26949 Filed: 12/12/2022 8:45 am; Publication Date: 12/13/2022]

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<sup>22</sup> 17 CFR 200.30-3(a)(12).